

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

GARY MAX CHAMBERS

PLAINTIFF

v.

Civil No. 6:18-cv-06091

JASON WATSON, Sheriff, Clark County,  
Arkansas; DERRICK BARNES, Administrator,  
Clark County Detention Facility; ROBERT JONES,  
Deputy Sheriff, Clark County; DEPUTY FERGUSON,  
Clark County, Arkansas; OFFICER CHASE KERSEY;  
OFFICER K. LOVE, Clark County Detention Facility; and  
TOMMY WALDRON, Amity Police Department

DEFENDANTS

**ORDER**

The Plaintiff, Gary Max Chambers, originally filed this *pro se* action on September 27, 2018 in the Eastern District of Arkansas pursuant to 42 U.S.C. § 1983. (ECF No. 1, 2). The matter was then transferred to this Court. Plaintiff's application to proceed *in forma pauperis* has been granted. Plaintiff filed an Amended Complaint on October 9, 2018, which was ordered to be served upon the Defendants. (ECF No. 7, 8).

There are several motions currently pending in this matter, including:

- Plaintiff's Motion to Appoint Counsel (ECF No. 24);
- Plaintiff's Motion for Summary Judgment (ECF No. 25);
- Clark County Defendants' Motion to Strike Plaintiff's Motion for Summary Judgment (ECF No. 26); and
- the Motion to Set Aside Service for Defendant Ferguson (ECF No. 29).

In **Plaintiff's Motion to Appoint Counsel (ECF No. 24)**, he seeks appointment of counsel and states that the issues are complex and that his knowledge of the law is limited. Plaintiff previously filed a Motion to Appoint Counsel. (ECF No. 13). This prior Motion was denied. (ECF No. 18). The Court finds that the instant Motion (ECF No. 24) should be, and hereby is,

**DENIED.** A civil litigant does not have a constitutional or statutory right to appointed counsel in a civil action; but, the Court may appoint counsel at its discretion. 28 U.S.C. § 1915(e)(1). In this case, the Court has considered the need for an attorney, the likelihood that the Plaintiff will benefit from assistance of counsel, the factual and legal complexity of the case, and whether Plaintiff has the ability to investigate and present this case. In considering these factors, the Court finds that the claims currently before the Court do not appear legally or factually complex, and that Plaintiff is adequately prosecuting this case at this time. Plaintiff is instructed not to file any further Motion for Appointment of Counsel. If counsel is required or would assist the Court, the Court will consider such *sua sponte* at a later date.

The Court next turns to the **Motion to Set Aside Service for Defendant Ferguson (ECF No. 29)**. In that motion, the Clark County Defendants, Sheriff Jason Watson, Derrick Barnes, Robert Jones, Chase Kersey, Officer Love, Chief Deputy Nick Funderburk, Deputy Andrew Samuels, Deputy Perry and Deputy Nate Morrison, seek to set aside the purported service of the complaint upon “Deputy Ferguson.” The Clark County Defendants report to the Court that no such individual exists, and that receipt of service was a mistake. The Court, therefore finds that the Motion (ECF No. 29) should be, and hereby is **GRANTED**. **The Clerk of this Court is directed to terminate Deputy Ferguson as a party to this action.**

Plaintiff has also filed **Motion for Summary Judgment (ECF No. 25)**. In the motion, Plaintiff seeks summary judgment against the Defendants. Plaintiff’s sole argument for summary judgment is that the Defendants have not filed an answer to his Amended Complaint. The Court notes that an Answer was filed on behalf of all Defendants (ECF Nos. 11, 12, 22). For this reason, the Court find that the Motion (ECF No. 25) should be, and hereby is, **DENIED AS MOOT**.

Finally, the Court finds that the **Clark County Defendants’ Motion to Strike Plaintiff’s Motion for Summary Judgment (ECF No. 26)** should likewise be, and hereby is, **DENIED AS**

**MOOT.**

IT IS SO ORDERED this 25<sup>th</sup> day of February 2019.

/s/ Barry A. Bryant  
HON. BARRY A. BRYANT  
UNITED STATES MAGISTRATE